

AMENDMENTS TO LB 1010

Introduced by Natural Resources.

1 1. Strike the original sections and insert the following
2 sections:

3 Section 1. Sections 1 to 7 of this act are procedures for
4 the use of eminent domain by a natural resources district to take
5 private real property for a trail.

6 Sec. 2. For purposes of sections 1 to 7 of this act:

7 (1) Private real property does not include any public
8 land such as real property under the general management of the
9 Board of Educational Lands and Funds;

10 (2) District means a natural resources district;

11 (3) Trail means a thoroughfare or track across real
12 property used for recreational purposes; and

13 (4) Supermajority means sixty-seven percent or more.

14 Sec. 3. Before establishing a trail, the district shall
15 consider, at a public hearing, all of the following:

16 (1) The proposed route for the trail, including maps and
17 illustrations, and the mode of travel to be permitted;

18 (2) The areas adjacent to such route to be utilized
19 by the district for scenic, historic, natural, cultural, or
20 developmental purposes;

21 (3) The characteristics that make the proposed route
22 suitable as a trail;

23 (4) The plans for developing, operating, and maintaining

1 the proposed trail;

2 (5) Any anticipated problems enforcing the proper use of
3 the proposed trail or hazards to private real property adjacent to
4 such trail;

5 (6) The current status of the real property ownership and
6 current and potential use of the real property in and along the
7 proposed route;

8 (7) The estimated cost of acquisition of the real
9 property, or an interest therein, needed for the proposed route;
10 and

11 (8) The extent and type of private real property
12 interest needed to establish the proposed trail, the right-of-way
13 acquisition process to be followed, and the circumstances under
14 which eminent domain may be utilized.

15 Sec. 4. If the district decides to establish the trail
16 after following the procedure under section 3 of this act, the
17 district may acquire private real property, or an interest therein,
18 to develop and maintain the trail by:

19 (1) Seeking to secure the written consent of the
20 private real property owners affected by the trail to enter
21 into negotiations and proceeding in good faith to reach negotiated
22 agreements with such owners for the private real property, or an
23 interest therein needed; or

24 (2) If all reasonable efforts to secure written consent
25 and negotiated agreements to acquire private real property, or
26 an interest therein, have failed, the district board may, by
27 resolution adopted by a supermajority of the district board at a

1 public meeting, elect to conduct a proceeding to determine whether
2 to use the power of eminent domain to acquire such property. Such
3 proceeding shall be a public hearing with general notice to the
4 public and specific notice by registered mail to all private real
5 property owners whose property would be subject to condemnation by
6 eminent domain. The public hearing shall be held no sooner than
7 forty-five days after the date the resolution is adopted. At the
8 public hearing, the district board shall receive evidence on the
9 question of whether to acquire private property by eminent domain
10 for the purpose of constructing the trail. The district board
11 may, by vote of a supermajority of its members, elect to proceed
12 with eminent domain to acquire such property if the district board
13 finds, by clear and convincing evidence received at the public
14 hearing, that all of the following criteria are met:

15 (a) Whether the trail has been publicized at a public
16 hearing held in accordance with section 3 of this act in the area
17 where the trail is planned and reasonable notice of the hearing was
18 provided to affected private real property owners;

19 (b) Whether good faith attempts to negotiate agreements
20 meeting the requirements of subdivision (1) of this section with
21 the affected private real property owners have been made and have
22 failed for some or all of the private real property that is
23 determined by the district board to be necessary for the trail to
24 be developed;

25 (c) Whether all other trail route alternatives have been
26 considered, with an evaluation of the extent to which private real
27 property may be involved and which may require the exercise of

1 eminent domain for each alternate route;

2 (d) Whether in locating the proposed trail consideration
3 was given to the directness of the route; trail design and costs;
4 safety to trail users, vehicle operators, and adjacent persons; and
5 adverse impacts and intrusions upon private real property owners or
6 persons using such property;

7 (e) Whether good faith attempts have been made to
8 address the concerns of affected private real property owners
9 regarding trail design, privacy, land protection, management, and
10 maintenance; and

11 (f) Whether any development and management of the trail
12 is designed to harmonize with and complement any established forest
13 or agricultural plan for the affected private real property.

14 Sec. 5. Acquisition of private real property, or an
15 interest therein, and any utilization of eminent domain approved
16 under sections 1 to 7 of this act to establish a proposed trail
17 shall be conducted in the manner and subject to the requirements
18 provided in sections 25-2501 to 25-2506 and 76-701 to 76-726.

19 Sec. 6. (1) A private real property owner or lessee
20 of property adjoining a trail has no duty (a) to maintain or
21 repair the trail or (b) to protect users of the trail from danger
22 resulting from conditions on the trail unless such conditions are
23 the result of an intentional or negligent act of such owner or
24 lessee.

25 (2) A negotiated written agreement between a district and
26 a private real property owner regarding the acquisition of real
27 property, or an interest therein, by the district to establish and

1 maintain a trail shall clearly express both parties' rights and
2 obligations, including the obligation of the district to maintain
3 the trail and the liability of the district for property damage or
4 personal injury, or both, to users of the trail.

5 Sec. 7. An affected private real property owner may
6 appeal the decision of the district board to use eminent domain
7 under sections 1 to 7 of this act by petition in error to the
8 district court of the county where the affected private real
9 property is located. No petition to condemn private real property
10 affected by the proposed trail shall be filed in county court until
11 any error proceeding under this section is final.

12 Sec. 8. Section 2-3234, Revised Statutes Supplement,
13 2009, is amended to read:

14 2-3234 Except as provided in section 2-3226.11 and
15 sections 1 to 7 of this act, each district shall have the
16 power and authority to exercise the power of eminent domain when
17 necessary to carry out its authorized purposes within the limits
18 of the district or outside its boundaries. Exercise of eminent
19 domain shall be governed by the provisions of sections 76-704 to
20 76-724, except that whenever any district seeks to acquire the
21 right to interfere with the use of any water being used for power
22 purposes in accordance with sections 46-204, 70-668, 70-669, and
23 70-672 and is unable to agree with the user of such water upon
24 the compensation to be paid for such interference, the procedure
25 to condemn property shall be followed in the manner set forth in
26 sections 76-704 to 76-724 and no other property shall be included
27 in such condemnation. No district shall contract for delivery of

1 water to persons within the corporate limits of any village, city,
2 or metropolitan utilities district, nor in competition therewith
3 outside such corporate limits, except by consent of and written
4 agreement with the governing body of such political subdivision.
5 A village, city, or metropolitan utilities district may negotiate
6 and, if necessary, exercise the power of eminent domain for the
7 acquisition of water supply facilities of the district which are
8 within its boundaries.

9 Sec. 9. The Revisor of Statutes shall assign sections 1
10 to 7 of this act within Chapter 2, article 32.

11 Sec. 10. Original section 2-3234, Revised Statutes
12 Supplement, 2009, is repealed.

13 Sec. 11. Since an emergency exists, this act takes effect
14 when passed and approved according to law.